

AMENDED IN SENATE APRIL 13, 2011

AMENDED IN SENATE MARCH 23, 2011

SENATE BILL

No. 34

Introduced by Senator Simitian

December 6, 2010

An act to add Division 36 (commencing with Section 87000) to the Water Code, relating to water, ~~and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 34, as amended, Simitian. California Water Resources Investment Act of 2011.

(1) Under existing law, various measures provide funding for water resources projects, facilities, and programs.

This bill would enact the California Water Resources Investment Act of 2011 to finance a water resources investment program. To finance the program, the bill would impose on each retail water supplier in the state an annual charge based on the volume of water provided in its service area that is provided for nonagricultural uses and an annual charge based on each acre of land within its service area that is irrigated for agricultural ~~uses~~ *purposes*. The bill would require the State Board of Equalization to collect the charges from retail water suppliers in accordance with the Fee Collection Procedures Law, and would authorize the State Board of Equalization and the Department of Water Resources to adopt and enforce regulations for the administration and enforcement of the charges and related requirements as emergency regulations.

The bill would require the revenues of the charges collected for purposes of the water resources investment program to be deposited in the California Water Resources Investment Fund, which would be

established by the bill. The bill would establish a State Investment Account and ~~11 an unspecified number of~~ regional investment accounts within the fund, and would require 50% of the moneys deposited in the fund to be ~~continuously appropriated to the Controller for transfer~~ transferred to the State Investment Account and 50% of the moneys deposited in the fund to be ~~continuously appropriated to the Controller for transfer~~ transferred to the regional investment accounts based on the amount of charges collected within each *unspecified* funding region established by the bill.

The bill would continuously appropriate the moneys in each of the regional investment accounts to the Department of Water Resources for purposes of providing financing for regional projects related to water storage, water conservation, water conveyance, desalination, wastewater recycling, levee improvements, safe drinking water, flood plain management, and the restoration of fish and wildlife, consistent with a specified integrated regional water management plan that meets prescribed requirements. The bill would require the Department of Water Resources to adopt regulations for the preparation of integrated regional water management plans for these purposes.

The bill would require the moneys in each of the regional investment accounts to be available, upon appropriation by the Legislature, for purposes of providing funding for public benefits of water-related projects and programs, consistent with prescribed requirements.

The bill would require the moneys in the State Investment Account to be expended, upon appropriation by the Legislature, for administration of the water resources investment program and to fund ~~specified programs proposed by the California Water Commission~~ *public benefits of specified water-related projects and programs*, including statewide water resources projects, ~~financing~~ the operating expenses of the Delta Stewardship Council and the Delta Plan adopted by the council, projects that reduce the impacts of mercury contamination in the Sacramento-San Joaquin Delta, ~~and~~ specified scientific studies and assessments, *debt service on general obligation bonds for projects and programs that provide statewide and interregional public benefits, and other unspecified purposes.*

The bill would require the State Auditor to conduct a programmatic review and audit of expenditures from the above-described funds and annually report the findings of the review and audit to the Governor and the Legislature. The bill would also require the California Water Commission to annually review expenditures authorized pursuant to

~~the bill and to hold specified hearings relative to the water resources investment program.~~

(2) By expanding the application of the Fee Collection Procedures Law, the violation of which is a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(3) This bill would constitute a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and this would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

Vote: $\frac{2}{3}$. Appropriation: ~~yes~~-no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Division 36 (commencing with Section 87000) is
2 added to the Water Code, to read:

3
4 DIVISION 36. CALIFORNIA WATER RESOURCES
5 INVESTMENT ACT

6
7 CHAPTER 1. GENERAL PROVISIONS

8
9 87000. This division shall be known and may be cited as the
10 California Water Resources Investment Act of 2011.

11 87010. The Legislature finds and declares all of the following:

12 (a) It is necessary to establish a sustainable revenue source to
13 fund the public benefits of water-related projects and programs.

14 (b) (1) Public benefits are the advantages or outcomes from
15 an undertaking that accrue to the general public. Public benefits
16 are such that no one person or group of people can be effectively
17 excluded from receiving the benefits. While some public benefits
18 of water-related projects and programs may accrue to all
19 Californians, others accrue on a more limited regional basis, such
20 as within a specific watershed or hydrologic region.

(2) *Public benefits of water-related projects and programs may include any of the following:*

(A) *Enhancement of public trust resources beyond the regulatory baseline.*

(B) *Protection of public health and safety.*

(C) *Efficient administration of water-related institutions or information.*

(D) *Research and development of new technologies.*

(E) ____.

(c) *Funding of public benefits should be guided by the beneficiary pays principle and the polluter pays principle.*

(1) *Under the beneficiary pays principle, beneficiaries of a program or project pay for the benefits they receive in approximate proportion to the benefits received. Beneficiaries may include individual water users, water agencies, nonprofit organizations, local or regional governments, and the general public. Beneficiaries are not expected to pay for actions that fall under the polluter pays principle.*

(2) *Under the polluter pays principle, those who cause or may cause harm to the environment pay the costs to remediate, mitigate, or avoid causing that harm. The polluter pays principle is designed to ensure that a project or program bears the full cost of the environmental effects of that project or program.*

(d) (1) *Decisions regarding funding of public benefits of water-related projects and programs should be made by the public receiving those benefits.*

(2) *Decisions regarding funding of public benefits that accrue statewide should be made by the state.*

(3) *Decisions regarding funding of public benefits that accrue a specific region should be made by that region.*

(e) *Under the principles set forth in subdivisions (a) to (d), inclusive, responsibility for funding water-related programs should be as follows:*

(1) *The state should generally be responsible for funding the public benefits of certain types of water-related programs. Depending on the specific circumstance, these may include:*

(A) *Projects or programs that provide public benefits statewide or to more than one region.*

(B) *Protection and enhancement of public trust resources beyond that required of any person or entity as a condition of a permit,*

1 regulation, state or federal statute, or other legally enforceable
2 requirement.

3 (C) Protection of public health or safety where local agencies
4 are unable to perform this task adequately.

5 (D) Resolving interregional legacy problems, such as mercury
6 pollution, where the person or entity that caused the pollution
7 cannot be found or no longer exists and there is no other practical
8 recourse to cause remediation of the problem.

9 (E) Efficient administration of state water institutions or
10 information.

11 (F) Research and development of new technologies.

12 (G) Debt service on general obligation bonds for projects and
13 programs that provide statewide and interregional public benefits.

14 (H) ____.

15 (2) Specific regions of the state should generally be responsible
16 for funding the public benefits of certain types of water-related
17 programs. Depending on the specific circumstance, these might
18 include:

19 (A) Projects or programs that provide public benefits to that
20 specific region.

21 (B) Protection and enhancement of public trust resources beyond
22 that required of any person or entity as a condition of a permit,
23 regulation, state or federal statute, or other legally enforceable
24 requirement, where the protection or enhancement leads to other
25 regional public benefits.

26 (C) Protection of public health or safety.

27 (D) Resolving regional legacy problems, such as groundwater
28 pollution, where the person or entity that caused the pollution
29 cannot be found or no longer exists and there is no other practical
30 recourse to cause remediation of the problem

31 (E) Efficient administration of regional water institutions or
32 information, such as groundwater monitoring entities.

33 (F) Attaining regional water quality objectives for nonpoint
34 source pollutants.

35 (G) Debt service on general obligation bonds for projects and
36 programs that provide regional or local public benefits.

37 (H) ____.

38 (f) Pursuant to the principles set forth in subdivisions (a) to (d),
39 inclusive, neither the state nor specific regions of the state should

1 have any responsibility to fund certain types of water-related
2 activities. These include, but are not limited to, all of the following:

- 3 (1) A project or program that provides no public benefits.
- 4 (2) An improvement required as a means of meeting mitigation
5 requirements associated with a project.
- 6 (3) An enhancement or improvement where a specific individual
7 or group of individuals can be identified as the sole beneficiaries.
- 8 (4) ____.

9 87020. The Legislature further finds and declares all of the
10 following:

11 (a) A water resources assessment imposed for purposes of
12 financing the public benefits of water-related projects and
13 programs should have all of the following characteristics:

14 (1) The assessment should be equitable, and should have equal
15 application to similar water users and differential application to
16 dissimilar water users in approximate proportion to their
17 differences.

18 (2) The assessment should be comprehensive, and should apply
19 to the greatest number of water users possible. There should be
20 few, if any, free riders.

21 (3) The assessment should be unavoidable. Those who are
22 subject to the assessment should not be able to avoid paying the
23 assessment through loopholes, exceptions, or similar mechanisms.

24 (4) The assessment should be affordable, and should not place
25 an undue burden upon those required to pay the assessment.

26 (5) The assessment should be understandable. The assessment
27 should be easy to explain and comprehend.

28 (6) The assessment should be easy to administer. The method
29 of collecting the assessment should minimize the costs of
30 administering and complying with the law.

31 (7) The assessment should be stable. The assessment should
32 provide a reasonably stable and predictable revenue stream.

33 (8) ____.

34 (b) Consistent with subdivision (a), and as a result of the
35 differences in the uses of water, sources of water, and methods of
36 distributing water among the end users, it is appropriate for a
37 water resources assessment to apply differently to agricultural
38 and nonagricultural water uses, and to have all of the following
39 characteristics:

1 (1) *The assessment should be imposed on all retail water*
2 *suppliers.*

3 (2) *The assessment should be imposed on nonagricultural water*
4 *uses based on the number of acre-feet of water used.*

5 (3) *The assessment should be imposed on agricultural water*
6 *users based on the number of acres of irrigated land.*

7 (4) *The assessment should be imposed without regard to whether*
8 *the water used by the end water user was purchased from the retail*
9 *water supplier or was self-supplied through a private well or other*
10 *private legal water right.*

11 (5) *The assessment should result in a different effective rate for*
12 *agricultural and nonagricultural uses.*

13 (6) *The assessment should encourage high levels of agricultural*
14 *water use efficiency.*

15 (7) ____.

16 (c) *The proceeds of a water resources assessment should be*
17 *shared between the state and regions of the state.*

18 (1) *Half of the proceeds should be allocated to the state to fund*
19 *statewide and interregional public benefits associated with*
20 *water-related projects and programs.*

21 (2) *Half of the proceeds should be allocated among the regions*
22 *of the state to fund regional and local public benefits associated*
23 *with water-related projects and programs. The allocation among*
24 *the regions should be in proportion to the proceeds raised in each*
25 *region.*

26 87030. *The purpose of this division is to establish a sustainable*
27 *funding source to fund the public benefits of water-related projects*
28 *and programs consistent with the policies set forth in this chapter.*

29
30 *CHAPTER 2. DEFINITIONS*

31
32 87040. *Unless the context otherwise requires, the following*
33 *definitions govern the construction of this division:*

34 (a) *“Applicant” means an entity that submits a regional*
35 *proposal for funding in accordance with this division.*

36 (b) *“Funding region” means one of the following regions in*
37 *the state:*

38 (1) ____.

39 (c) *“Integrated regional water management plan” has the same*
40 *meaning as defined in Section 10534.*

(d) “Investment fund” means the California Water Resources Investment Fund established pursuant to Section 87070.

(e) “Person” means any individual, estate, business or common law trust, firm, joint stock company, joint venture, business concern, corporation, including, but not necessarily limited to, a government corporation, partnership, limited partnership, limited liability partnership, limited liability company, and any other business entity, and any social club, cooperative organization, fraternal organization, or any other organization or association.

“Person” also includes any city, county, city and county, district, commission, the state or any department, agency, or political subdivision thereof, any interstate body, and the United States and its agencies and instrumentalities to the extent permitted by law.

(f) “Public agency” means a state agency or department, a district, a joint powers authority, a city, county, a city and county, and any other political subdivision of the state.

(g) “Regional investment account” means any of the _____ accounts established in the investment fund pursuant to Section 87070 and corresponding to a funding region identified pursuant to subdivision (b).

(h) “Retail water service” means water service that is purchased by municipal, industrial, or agricultural water customers without further sale of water to other water customers.

(i) “Retail water supplier” means any local entity, including a public agency, city, county, investor-owned utility, municipal water company, or private water company or person that provides retail water service to municipal, industrial, or agricultural water customers.

CHAPTER 3. INVESTMENT IN CALIFORNIA WATER RESOURCES

Article 1. General Provisions

87050. (a) The department and the State Board of Equalization may each adopt emergency regulations to implement and enforce this chapter.

(b) The emergency regulations adopted pursuant to subdivision (a) shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including

1 *Section 11349.6 of the Government Code, the adoption of these*
2 *regulations is an emergency, and shall be considered by the Office*
3 *of Administrative Law as necessary for the immediate preservation*
4 *of the public peace, health, safety, and general welfare.*
5 *Notwithstanding Chapter 3.5 (commencing with Section 11340)*
6 *of Part 1 of Division 3 of Title 2 of the Government Code, any*
7 *emergency regulations adopted by the department or the State*
8 *Board of Equalization pursuant to this section shall be filed with,*
9 *but not be repealed by, the Office of Administrative Law, and shall*
10 *remain in effect for a period of two years or until revised by the*
11 *department or the State Board of Equalization, whichever occurs*
12 *first.*

13
14 *Article 2. Water Resources Assessment*
15

16 *87060. (a) Commencing July 1, 2012, an annual water*
17 *resources assessment shall be imposed on every retail water*
18 *supplier in this state for each calendar year, in accordance with*
19 *the following requirements:*

20 *(1) A charge of ____ dollars (\$____) per acre foot of water that*
21 *is sold for nonagricultural uses.*

22 *(2) (A) Except as provided in subparagraph (B) and subdivision*
23 *(b), a charge of ____ dollars (\$____) per acre of land that is*
24 *irrigated for agricultural purposes within the service area of the*
25 *retail water supplier. This charge shall apply to all land irrigated*
26 *for agricultural purposes, regardless of whether the source of the*
27 *irrigation water is surface or groundwater.*

28 *(B) For each acre of land that the department determines to be*
29 *utilizing best management practices for the crop and soil type*
30 *irrigated on that acre, as determined pursuant to subdivision (b),*
31 *the water resources assessment shall be ____ dollars (\$____).*

32 *(b) On or before July 1, 2013, the department shall adopt*
33 *regulations establishing a program to determine best management*
34 *practices for irrigated agriculture, based on crop and soil type.*

35 *87062. The imposition of the water resources assessment in*
36 *accordance with this article is a matter of statewide interest and*
37 *concern, and is applicable uniformly throughout the state.*

1 Article 3. *Collection of Water Resources Assessment*

2
3 87065. (a) *The State Board of Equalization shall collect and*
4 *administer the water resources assessment imposed pursuant to*
5 *Section 87060 in accordance with the Fee Collection Procedures*
6 *Law (Part 30 (commencing with Section 55001) of Division 2 of*
7 *the Revenue and Taxation Code). For purposes of this section,*
8 *“feepayer,” within the meaning of the Fee Collection Procedures*
9 *Law, shall include a retail water supplier.*

10 (b) *For each calendar year, the water resources assessment*
11 *imposed pursuant to Section 87060 shall be due and payable to*
12 *the State Board of Equalization by July 1 of the immediately*
13 *following calendar year. Payments shall be accompanied by a*
14 *return in the form prescribed by the State Board of Equalization,*
15 *and may include, but are not necessarily limited to, electronic*
16 *media.*

17 (c) *Notwithstanding subdivision (b), if the State Board of*
18 *Equalization deems it necessary in order to ensure payment or to*
19 *facilitate collection of the water resources assessment, the State*
20 *Board of Equalization may require annual returns and payment*
21 *of the water resources assessment for a different period from that*
22 *set forth in subdivision (b), as determined by the State Board of*
23 *Equalization.*

24 (d) *The State Board of Equalization may prescribe, adopt, and*
25 *enforce regulations for the administration and enforcement of the*
26 *water resources assessment pursuant to this article.*

27 87066. *A retail water supplier may collect the costs of the water*
28 *resources assessment from its customers by using the amounts set*
29 *forth in subdivision (a) of Section 87060 or by using an alternate*
30 *collection method consistent with the supplier’s practices.*

31 87067. (a) *On or before March 1, 2012, each retail water*
32 *supplier in the state shall submit to the department a written*
33 *statement describing whether it is publicly or privately owned, its*
34 *official mailing address, a map of its service area, the connection*
35 *categories used in billing its water customers and the number of*
36 *connections in each category, the volume of water provided to its*
37 *nonagricultural customers in the immediately preceding calendar*
38 *year, the number of acres irrigated for agricultural use within its*
39 *service area, and any other relevant information as may be*
40 *determined by the department.*

1 (b) On or before July 1, 2012, the department shall provide the
2 State Board of Equalization with a list of each retail water supplier
3 in the state, including the information for each retail water supplier
4 collected pursuant to subdivision (a).

5
6 Article 4. California Water Resources Investment Fund
7

8 87070. (a) The California Water Resources Investment Fund
9 is established in the State Treasury.

10 (b) The investment fund consists of ____ accounts, which are
11 hereby established as follows:

12 (1) The General Account for receipt of deposits from the State
13 Board of Equalization and for general expenditures.

14 (2) The State Investment Account.

15 (3) ____ regional investment accounts, corresponding to the
16 funding regions specified in subdivision (b) of Section 87040.

17 (c) Water resources assessments and any penalties imposed on
18 retail water suppliers in connection with the collection of the
19 assessments by the State Board of Equalization, shall be remitted
20 by the State Board of Equalization, in accordance with Article 2
21 (commencing with Section 87060), and shall be deposited in the
22 investment fund. Notwithstanding Section 16305.7 of the
23 Government Code, all interest earned on moneys deposited in the
24 investment fund shall be maintained in the investment fund.

25 (d) Moneys deposited in the investment fund shall not be
26 appropriated for any purpose other than the purposes authorized
27 by this division.

28 87072. (a) All moneys collected pursuant to this chapter shall
29 be deposited by the State Board of Equalization into the General
30 Account in the investment fund.

31 (b) The Controller shall transfer the moneys deposited in the
32 General Account to the State Investment Account and the regional
33 investment accounts, as follows:

34 (1) Fifty percent shall be transferred to the State Investment
35 Account.

36 (2) Fifty percent shall be transferred to the ____ regional
37 investment accounts on a pro rata basis that reflects the percentage
38 of the moneys collected from within each respective funding region.

39 (c) For purposes of calculating the amounts transferred pursuant
40 to paragraph (2) of subdivision (b), the State Board of Equalization

1 *shall provide a statement of the percentage of the moneys collected*
2 *pursuant to this chapter that is attributable to each of the funding*
3 *regions to the Controller on a quarterly basis.*

4 87074. (a) *Notwithstanding any other law, the State Investment*
5 *Account and each of the regional investment accounts shall*
6 *accumulate the revenues deposited in the respective accounts in*
7 *any year in which those revenues are not expended.*

8 (b) *Notwithstanding Section 16305.7 of the Government Code,*
9 *any interest earned on moneys deposited in the State Investment*
10 *Account or any of the regional investment accounts shall be*
11 *retained in the respective account and may be expended for the*
12 *authorized purposes of the respective account.*

13
14 *Article 5. Regional Investment Accounts*
15

16 87080. *The moneys in each regional investment account shall*
17 *be available, upon appropriation by the Legislature, to fund public*
18 *benefits of water-related projects and programs in accordance*
19 *with this article.*

20 87082. *In order to be eligible for financial assistance from a*
21 *regional investment account, a project or program shall be*
22 *consistent with one or more of the following:*

23 (a) *An adopted integrated regional water management plan*
24 *consistent with Part 2.2 (commencing with Section 10530) of*
25 *Division 6.*

26 (b) *An adopted stormwater resource plan consistent with Part*
27 *2.3 (commencing with Section 10560) of Division 6.*

28 (c) *An adopted groundwater management plan that complies*
29 *with the requirements of Section 10753.7.*

30 (d) *A water quality control plan developed pursuant to Section*
31 *13240.*

32 (e) ____.

33 87084. *In order to be eligible for financial assistance from a*
34 *regional investment account, an applicant submitting a proposal*
35 *for funding shall meet all of the following requirements, as*
36 *applicable:*

37 (a) *If the applicant is an urban water supplier, the applicant*
38 *shall prepare, adopt, and submit to the department an urban water*
39 *management plan in accordance with the Urban Water*

1 *Management Planning Act (Part 2.6 (commencing with Section*
2 *10610) of Division 6).*

3 *(b) If the applicant is an agricultural water supplier, the*
4 *applicant shall prepare, adopt, and submit to the department an*
5 *agricultural water management plan in accordance with Part 2.8*
6 *(commencing with Section 10800) of Division 6.*

7 *(c) If the applicant requests funding for a groundwater*
8 *management, storage, or recharge project, or a project with*
9 *potential groundwater impacts, the applicant shall demonstrate*
10 *that one or more of the following conditions have been met, as*
11 *applicable:*

12 *(1) A groundwater management plan for the affected*
13 *groundwater basin has been prepared and implemented in*
14 *accordance with Part 2.75 (commencing with Section 10750) of*
15 *Division 6.*

16 *(2) The applicant participates in, or agrees to be subject to, a*
17 *groundwater management plan, basinwide management plan, or*
18 *other program or plan that meets the requirements of Section*
19 *10753.7.*

20 *(3) The applicant complies with the requirements of an*
21 *adjudication of water rights in an affected groundwater basin. For*
22 *purposes of this paragraph, an “adjudication” includes an*
23 *adjudication under Section 2101, an administrative adjudication,*
24 *and an adjudication in state or federal court.*

25
26 *Article 6. State Investment Account*
27

28 *87090. The moneys in the State Investment Account shall be*
29 *expended, upon appropriation by the Legislature, for all of the*
30 *following purposes:*

31 *(a) For allocation to the State Board of Equalization for payment*
32 *of refunds of the water resources assessment, interest, and*
33 *penalties, as authorized pursuant to Chapter 5 (commencing with*
34 *Section 55221) of Part 30 of Division 2 of the Revenue and*
35 *Taxation Code, including refunds due on account of judgments*
36 *for the return of charges that are unlawfully collected.*

37 *(b) For allocation to the State Board of Equalization and the*
38 *department to ensure sufficient revenues for those agencies to*
39 *carry out the duties imposed upon each of them by this division.*

1 (c) For a reserve, not to exceed ____ dollars (\$____), which
2 shall be maintained in the State Investment Account.

3 87092. The balance of the moneys in the State Investment
4 Account, after allocation for expenditure for all of the purposes
5 set forth in Section 87090, shall be available, upon appropriation
6 by the Legislature, to fund the public benefits of the following
7 water-related projects and programs:

8 (a) Projects of statewide and interregional significance.

9 (b) Operating expenses of the Delta Stewardship Council and
10 the Delta Plan adopted by the Delta Stewardship Council, and
11 grants and direct expenditures to implement the Delta Plan.

12 (c) Projects that reduce the impacts of mercury contamination
13 of the Sacramento-San Joaquin Delta and its watersheds, and
14 remediation and elimination of continuing sources of mercury
15 contamination.

16 (d) Scientific studies and assessments that support projects
17 authorized under this section.

18 (e) Debt service on general obligation bonds for projects and
19 programs that provide statewide and interregional public benefits.

20 (f) ____.

21 SEC. 2. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.

30
31
32 **All matter omitted in this version of the bill**
33 **appears in the bill as amended in the**
34 **Senate, March 23, 2011. (JR11)**
35